IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 581 of 2005.

Judgement reserved on:

Date of decision : May 8, 2006.

Chuhar Singh …….. Appellant.

Versus

Uttam Singh & anr. ……. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. G.R.Palsra, Advocate.

For the respondents: Mr. Bhupender Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocate.

Surjit Singh J. (Oral).

Heard and gone through the record. Plaintiff Chuhar Singh, filed a suit against his brother Uttam Singh and one Gian Chand, respondents herein, alleging that he is owner of khasra No. 140 and that adjacent to this khasra No. 140, there is khasra No. 133 measuring 1 Biswa 12 Biswansis, shown in the ownership and possession of his brother Uttam Chand, impleaded as defendant No.1 and that as a matter of fact the entire area of this khasra number had been in his possession for last more than 12

Whether reporters of local Papers may be allowed to see the judgment?

years and his possession was open, hostile, uninterrupted and continuous. It was alleged that defendant No.1 Uttam Chand had sold khasra No. 133 to respondent No. 2 Gian Chand and Gian Chand respondent No. 2 threatened to dispossess him. So he filed the suit for declaration that he was the owner in possession of khasra No. 133 and also claimed injunction restraining the respondents from interfering in his possession. It was alleged that a portion of khasra No. 133 was under the house of the plaintiff and the extent of that portion was 5 Biswansi, per tatima Ex. PW 3/A.

Respondents- defendants contested the plaintiff's claim. They alleged that the entire area of khasra No. 133 was under cultivation and earlier defendant No. 1 had been cultivating it and after the sale made by him in favour of respondent No.2, the latter was in its possession. It was specifically denied that any portion of the house of the plaintiff stood on any part of kharas No. 133. It was alleged that the house of the plaintiff stood on his own adjoining khasra No. 140.

Trial court dismissed the plaintiff's suit holding that it was not in possession of any portion of khasra No. 133. Appeal filed by the plaintiff in the court of District Judge has also been dismissed with the same finding.

Appellant's submission is that it was a boundary dispute and therefore, the courts below ought to have appointed some Local Commissioner, especially when a portion of the house of the plaintiff, to the extent of 5 Biswansi, stands on khasra No. 133. Submission has been noticed only to be rejected. Respondents have taken a specific stand that no portion of the house of the

plaintiff stands on any part of khasra No. 133. That means the respondents- defendants admit the existence of the house of the plaintiff but they say that the entire structure stands on the plaintiff's own land bearing khasra No. 140. If that is the stand of the respondents- defendants, the plaintiff can atleast remain assured that nobody is going to interfere in his possession over the structure standing on the spot, which according to the respondents-defendants stands on khasra No. 140 in its entirety and according to the plaintiff it partly stands on khasra No. 133 to the extent of 5 Biswansis.

In view of the above stated position, there hardly arises any substantial question of law. So the appeal is dismissed.

CMP No. 1009 of 2005.

Interim order dated 11.11.2005 is vacated and the application is dismissed.

May 8, 2006. **(Surjit Singh),**
(Hem) **Judge.**